ARMY STANDARDS OF CONDUCT

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Purpose

To provide a better understanding of the ethical principles involved with conflicts of interest, gifts, and working with contractors in order to fulfill the statutory requirement to provide annual ethics training to each person required to file a financial disclosure report.

References

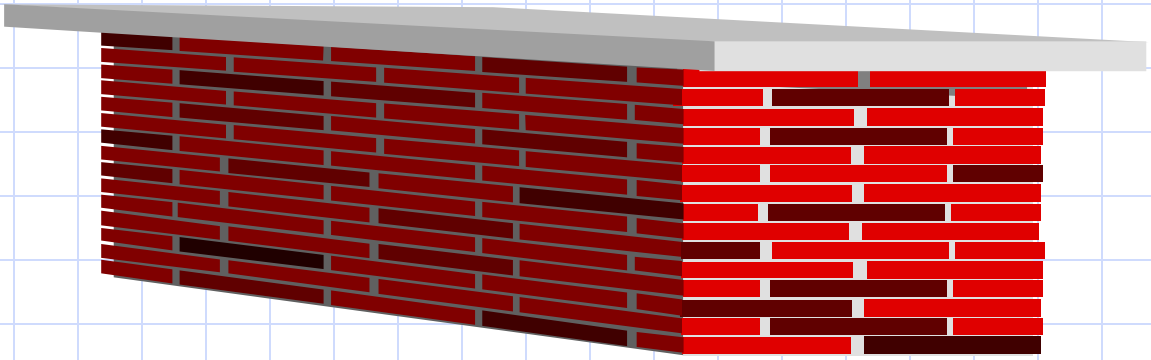
- DoD 5500.7-R, Joint Ethics Regulation
- Ethics Powerpoint Presentation prepared by Mr. Alfred Novotne, Army Standards of Conduct Office, HQDA
- http://www.defenselink.mil/dodgc/defense_ethics/

Outline

- Introduction
- Purpose of Financial Disclosures
- Conflicts of Interest
- Contractors in the Workplace
- Gifts From Contractors
- Conflicts of Interest - Contractors
- Inside Information
- Conclusion

Introduction

- The Public expects their government to be fair and impartial.
- We cannot have conflicts of interest and still be impartial.
- Avoiding conflicts--and improper influence-- is our ethics foundation.



Purpose of Financial Disclosures

- The purpose of the OGE 450 and the SF 278 is not to detect criminal behavior
- Commanders/Supervisors and employees should use the disclosure process to plan assignments and assign duties so as to avoid conflicts of interest

Conflicts of Interest
(1 of 3)

- **18 U.S.C. 208 - The Conflict Statute (Criminal)**
  - **May not participate <u>personally and substantially</u> through decision, approval, recommendation, advice, investigation or otherwise--**
  - **In a judicial proceeding, application, ruling, determination, contract, claim, controversy, charge or other <u>particular matter</u>--**
  - **In which you, your spouse, minor child, partner, organization in which you are an officer or employee, or company with whom you are negotiating for employment-**
  - **Has a financial interest.**

Conflicts of Interest
(2 of 3)

- **5 C.F.R. 2635.502 - Appearance of Conflict**
  - This rule covers the appearance of impropriety
  - Would a "reasonable person in possession of the relevant facts" see anything wrong?
  - Must also look at the financial interests of those with whom you have a "covered relationship"
    - Non-employment business relationship
    - Relatives
    - Organizations in which you were an officer, employee, or consultant during the last year
    - Organizations in which your relatives are officers
    - Organizations in which you are active

Conflicts of Interest
(3 of 3)

- Conflicts of Interest MUST be resolved
  - Disqualification
  - Divestiture
  - Waiver
  - Termination

Contractors in the Workplace

Advice on "Best Management Practices"

(1 of 2)

- Remember: Contractor employees are NOT Federal employees. We must respect the employer-employee relationship between contractors and their employees.
- Do not require "out of scope" work, personal services, or "inherently governmental functions."
- Identify contractor employees in meetings, communications, e-mail addresses and on ID cards.

Contractors in the Workplace

Advice on "Best Management Practices"

(2 of 2)

- Identify and resolve "organizational conflicts of interest."
- Safeguard inside information.
- Publish information on gifts and contractor employees.
- Resolve appearance issues created by close personal relationships between Federal and contractor employees.

Misuse of Official Position

5 C.F.R. 2635.702

"An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit."

In addition to contract limits, this rule bars assigning "out of scope" tasks to contractor personnel.

GIFTS FROM CONTRACTORS

- **Is it a "gift"?**
- **Is it a gift from a prohibited source?**
- **Does an exception apply?**
- **Should an exception be used?**

IS IT A GIFT?

5 C.F.R. 2635.203

What is not a gift?

Application of the "cheap and worthless" rule:

- **"Items with little intrinsic value intended solely for presentation."**
- **Plaques, coffee mugs, trophies**
- **Also, coffee and doughnuts**

IS IT A GIFT FROM A PROHIBITED SOURCE?

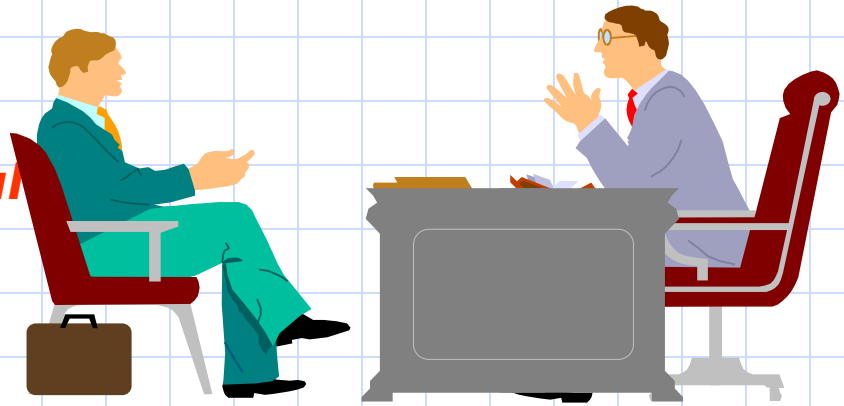
- **Yes, if given by someone who seeks to do business with DoD**

  5 C.F.R. 2635.203(d)

- **Or, if given because of the recipient's official position**

  5 C.F.R. 2635.203(e)

Contractor employees should always be treated as "Prohibited Sources"



DOES AN EXCEPTION APPLY?

- **$20 or less (& not to exceed $50 per year)**
- **Gifts to a large group (not based on rank)**
- ***Bona Fide* Award Programs**
- **Widely attended gathering**
  (consult Info Paper for details on this exception)
- **Outside personal or business relationships**

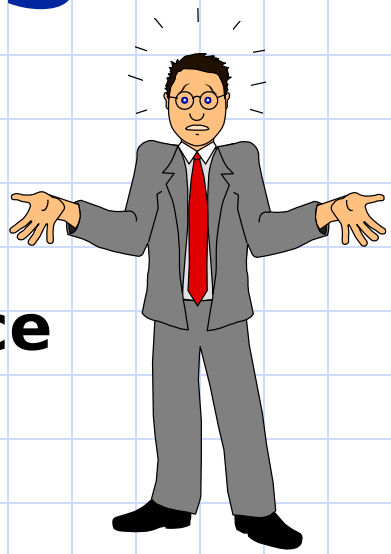
Personal gifts can be accepted only if the relationship is independent of the Federal workplace.

SHOULD AN EXCEPTION BE USED?

- **NO, if the gift undermines Government integrity:**
  - **If it is bribery or creates the appearance of a bribe**
  - **If gifts are given too frequently**
- **NO, if it undermines the integrity procurement activities**

5 C.F.R. § 3601.102(a)

IMPROPER GIFTS WHAT TO DO?

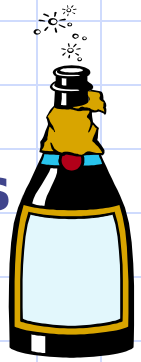


- **Eat It!**
  - **Food may be shared in the office**
- **Return It!**
- **Pay for It!**
- **Give It to Uncle! (the Army)**

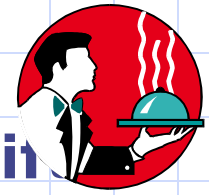
Uncle Sam is there for you and will relieve you of your unwanted burdens

Practice Tip: Your office should publish information on contractor gifts and solicitation

CONTRACTOR GIFTS

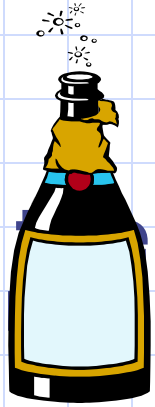


- About to retire, COL Hardcharger, project manager for the support contract, invites his employees to dinner at his house and includes Mark, a contractor employee, who brings a $22 bottle of wine.
- Mark invites COL Hardcharger and his wife for drinks & dinner at his favorite restaurant.
- COL Hardcharger's executive officer solicits from everyone for his retirement gi (a $250 briefcase). Mark contributes $25.

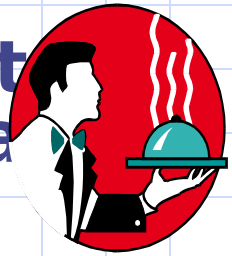


May COL Hardcharger accept Mark's gifts?

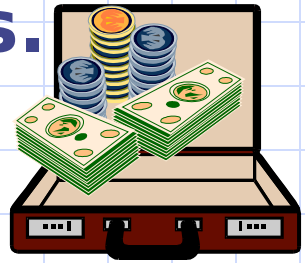
CONTRACTOR GIFTS



- COL Hardcharger may not accept [illegible] wine; the value exceeds $20 and no other exception applies.
- COL Hardcharger may not accept invitation from Mark for dinner at his favorite restaurant.



- The executive officer may not solicit, nor accept, gifts or contributions to gifts from outside sources, such as contractor employees.



Gifts From Subordinates
(1 of 6)

- Generally, subordinates may not give superiors gifts, but there are exceptions

Gifts From Subordinates
(2 of 6)

- Occasional basis (e.g., holidays, birthdays)
  - Valued at $10 or less (no cash)
  - Shared refreshments in office
  - Personal hospitality at residence

Gifts From Subordinates
(3 of 6)

- Examples of occasional gifts
  - $8 bag of candy after vacation
  - $9 poinsettia plant at holiday
  - dinner for supervisor in home
  - $15 bottle of wine at dinner in home

Gifts From Subordinates
(4 of 6)

- Special Infrequent Occasions
  - Occasions of personal significance, or
  - When supervisor-subordinate relationship ends
  - Gift “appropriate to the occasion”

Gifts From Subordinates
(5 of 6)

- Examples of gifts for special infrequent occasions
  - $30 floral arrangement after supervisor's surgery
  - $70 place setting at commander's wedding
  - $19 book at retirement

Gifts From Subordinates
(6 of 6)

- Limitations on gifts for special infrequent occasions
  - Generally, a $300 limit per “donating group”
  - $10 limit on solicitation (not on giving)
  - Must be voluntary (suggest organizer be junior and do not keep lists)

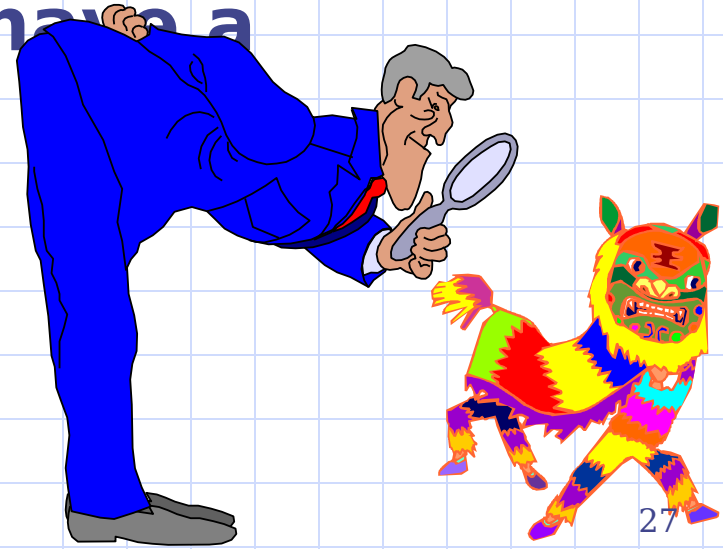
IMPROPER APPEARANCES

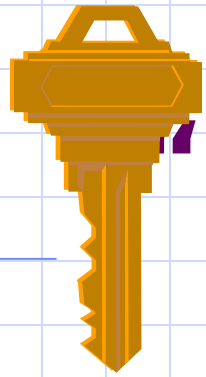
5 C.F.R. 2635.502

What would a "reasonable person in possession of the relevant facts" think?

This covers any appearance of impropriety and includes the interests of anyone with whom you have a "covered relationship."

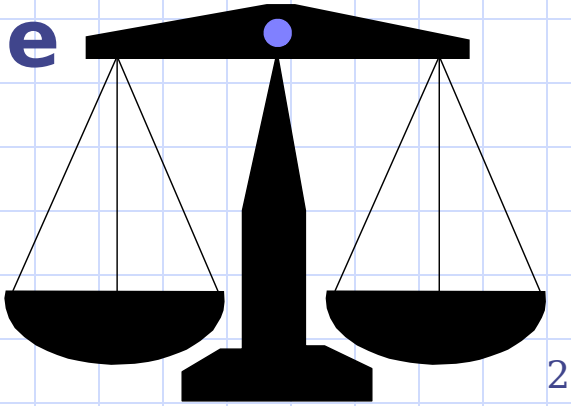
"I must say, this looks really bad!"





KEY CONCEPT "Reasonable person in possession of the relevant facts"

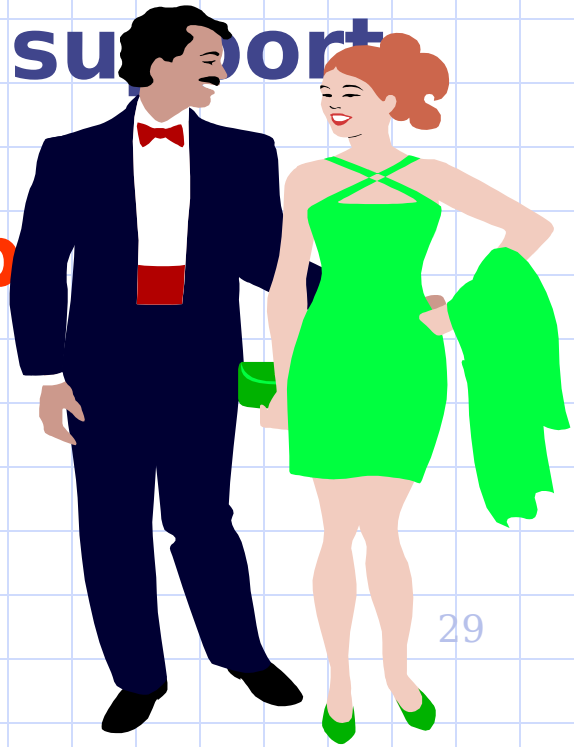
- Impartiality is judged on <u>all</u> relevant facts. This is not a "Washington Post" test.
- The "reasonable person" is your supervisor. It is he or she who weighs the facts.



THE DATING GAME

- LTC Gigabyte is the new DOIM.
- He is dating Jane Data, the contractor employee responsible for DOIM support.

Must LTC Gigabyte stop dating Jane Data?



THE DATING GAME

No, but…

- LTC Gigabyte should not participate in any contract issues, including the follow-on contract.
- LTC Gigabyte should not rate or evaluate the work done by Jane's company.
- LTC Gigabyte should issue a written notice of disqualificati

- Commander might want to select someone else as DOIM.

CONFLICTS OF INTEREST

- **Federal employees are barred from participating in official actions that affect their outside interests.**
- **But contractor employees are not subject to this statute!**
- **However, contractors are subject to organizational conflict limits (FAR 9.5).**

Practice Tip: Do you need conflict of interest restrictions in your contract requirements?

THE PHANTOM BRIEFER

- A support contractor, Mr. Ican, is tasked to brief the CG on a plan to increase a subordinate command's mission (which will also increase the support contract).
- Mr. Ican conducts the briefing but does not identify himself as a contractor employee.
- The briefing convinces the CG to double the size of the missio

Has Mr. Ican violated any laws?

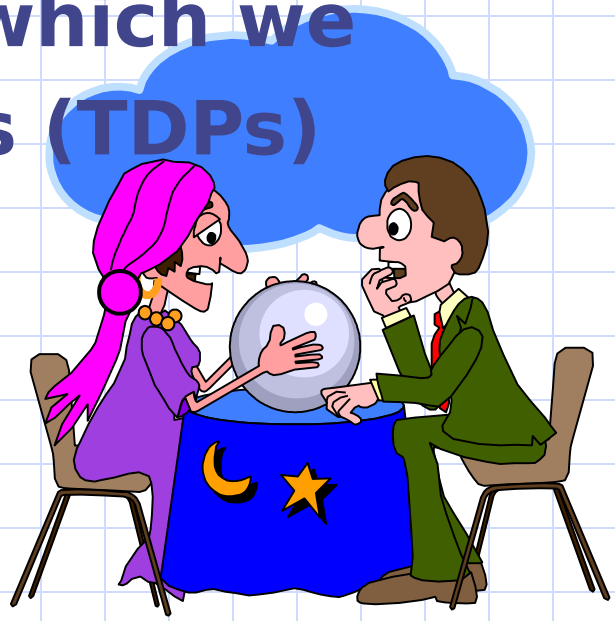
THE PHANTOM BRIEFER

- Mr. Ican did not violate any laws, BUT...
- Mr. Ican should have been introduced as a contractor employee to all attendees at the outset of the briefing.
- Mr. Ican may not prepare or brief the acquisition strat for the procurement sinc such activity will result an unfair competitive advantage under the FAR.

Inside Information

Often mysterious—it is information that is:

- **Not available to the general public**
- **Exempt under FOIA or protected by the Privacy Act**
- **Trade Secrets or data to which we purchased limited rights (TDPs)**
- **Procurement Sensitive**
- **Classified**
- **Information that would damage U.S. interests**



THE LEAK

- Mr. Lips, a contractor employee, not involved in a source selection process, overheard a conversation between two Source Selection Evaluation Board members.
- He heard that INSIDER won a contract that will be announced at noon tomorrow.
- He called his broker and purchased 1000 shares of INSIDER stock at $10 per share.
- After the award is announced, INSIDER's stock jumps to $20 per share giving this shrewd investor a tidy profit.

Did Mr. Lips violate any laws?

THE LEAK

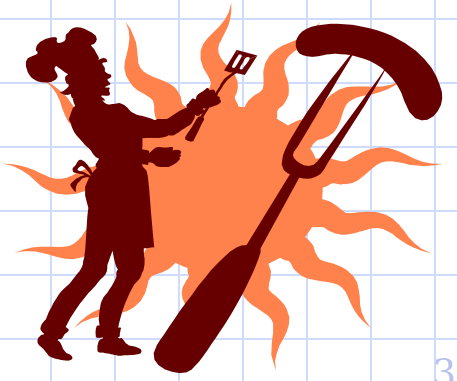
- Abuse of inside information is prohibited by the Joint Ethics Regulation, securities laws & other criminal statutes.
- Government employees may not give support contractors access to proprietary information unless the proprietary owner consents.
- The contractor and its employees should sign nondisclosure agreements.
- Ensure that Government employees know who the contractor employees are (such as distinctive badges and specific identification in e-mail addresses).

ORGANIZATION DAY

It is time for the Employee Annual Picnic.

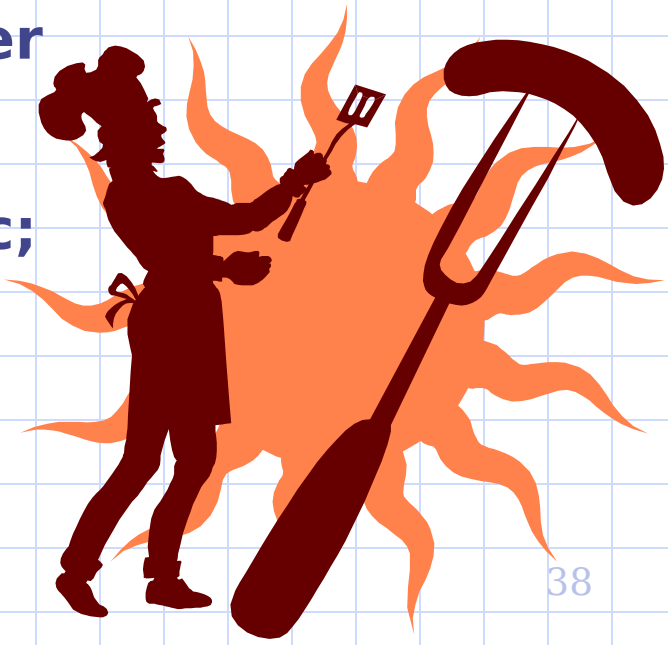
The project officer recommends that the CG invite all contractor employees to the picnic. After all, they are part of the team and should participate and enjoy the day off with their co-workers.

Should the CG invite contractor employees to participate in the picnic and organization day?



ORGANIZATION DAY

- In order to avoid putting pressure on the contractor, the CG should not **officially encourage** their attendance.
- Although not **officially** invited, contractor employees may attend the picnic, but:
  - The contractor decides whether they get time off and how;
  - We will not pay the contractor for time spent at the picnic;
  - We may not solicit contractor employees when fundraising;
  - We may not subsidize contractor employees.



CONCLUSION

- **Yes, contractor employees can and should be part of the “team.”**
- **Yes, contractor employees can and should be our friends and peers.**
- ***But*, we must respect their limitations.**
- ***And,* we should ensure that everyone in the office understands those limitations.**